

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Tyrone Doutherd,

Plaintiff,

v.

United Parcel Service Freight, et al.,

Defendants.

No. 2:21-cv-00780-KJM-JDP

ORDER

Plaintiff Tyrone Doutherd filed this action in Yolo County Superior Court in February 2021. Compl., Not. of Removal Ex. A, ECF No. 1. In April 2021, defendants United Parcel Service (UPS), UPS Ground Freight, Inc., Sarah Cutshaw and Reid Roy removed the complaint alleging this court had federal question and supplemental jurisdiction over plaintiff's claims.¹ Plaintiff then filed objections to this court's exercise of subject matter jurisdiction, which this court construed as a motion for remand. Pl. Obj., ECF No. 11; Min. Order (Oct. 8, 2021), ECF No. 25. Defendants also filed motions to dismiss. Mot. to Dismiss, ECF Nos. 6, 9. This court does not have federal question jurisdiction over the case, thus the court **remands** this action to state court and **moots** defendants' motions to dismiss.

¹ According to an attorney declaration filed with the defendants' notice of removal, individual defendants Gabriela Estrada, Shaquita [sic] Andrews, and James Anderson have not been served in this action. Att'y Emily Burkhardt Vicente ¶ 6, ECF No. 1-1.

1 **I. FACTUAL BACKGROUND**

2 Plaintiff's complaint is convoluted, disorganized, and its allegations and claims are
 3 difficult to discern. In eighty-two paragraphs, the complaint spans events that occurred over five
 4 years, references a litany of events already litigated in a prior suit, is organized neither by
 5 chronology nor category, and omits many references to statutes or legal authority as grounds for
 6 suit. *See, e.g.*, Compl. ¶¶ 18–23 (covering events from 2015 to 2020, alleging plaintiff
 7 complained about “three workplace injuries” with no prior explanation of what all three injuries
 8 were, discussing a “June 7, 2018” accident as the time when plaintiff stopped working and then
 9 discussing his “2020 damage allegations”). The court construes plaintiff's allegations to the best
 10 of its ability as follows, while also referencing the procedural history of the related case,
 11 *Doutherd v. Montesdeoca, et al.*, No. 2:17-cv-02225-KJM-JDP (E.D. Cal removed Oct. 24, 2017)
 12 (hereafter *Doutherd I*).²

13 In 2015, Mr. Doutherd was injured during a motor vehicle accident while driving for his
 14 employer, defendant UPSF. Compl. ¶ 18. Following his 2015 injury, Mr. Doutherd sued his
 15 employer and others in state court in August 2017. *Id.* Defendants in *Doutherd I* removed the
 16 action to this court in October 2017. *Doutherd I* Notice Of Removal, ECF No. 1. In *Doutherd I*,
 17 plaintiff made claims arising out of the 2015 motor vehicle accident, as well as claims for
 18 discrimination, harassment, retaliation, fraud, negligence and OSHA violations, arising otherwise
 19 from plaintiff's employment with UPSF. *See generally Doutherd I* Compl, Notice of Removal
 20 Ex. A, ECF No. 1-1.

21 In September 2018, plaintiff's counsel filed a first amended complaint in *Doutherd I*
 22 which included allegations of retaliation and race-based discrimination that occurred in 2017 and
 23 2018. *Doutherd I* First Am. Compl., ECF No. 33 UPSF moved to strike portions of plaintiff's
 24 First Amended Complaint, *Doutherd I* Mot. to Strike at 1–2, ECF No. 36, and the prior district
 25 judge granted that motion in full, *Doutherd I* Order (March 22, 2019) at 9, ECF No. 96 (striking

² The court takes judicial notice of the prior proceeding under Federal Rule of Evidence 201, as *Doutherd I* is a matter “of public record [and] the facts are not ‘subject to a reasonable dispute.’” *Vasserman v. Henry Mayo Newhall Mem’l Hosp.*, 65 F. Supp. 3d 932, 942 (C.D. Cal. 2014)

1 among others paragraphs 80–86 and paragraphs 88–110, which included allegations of retaliation
2 and race-based discrimination). The judge ordered plaintiff to either obtain UPSF’s written
3 consent or the court’s leave if he sought to amend his claims against UPSF. *Id.* at 9. Plaintiff
4 pursued the latter course but the judge denied the motion to amend, finding plaintiff did not
5 demonstrate good cause and that granting leave to amend would prejudice defendant. *See*
6 *generally Doutherd I* Mot. to Am., ECF No. 101; *Doutherd I* Order (Nov. 19, 2019), ECF
7 No. 122. Specifically, the judge stated the plaintiff was “not diligent in asserting his new
8 allegations contained in the proposed [second amended complaint]” as “[p]laintiff knew the
9 alleged facts prior to filing his [first amended complaint],” given that “[m]ost of the facts occurred
10 in 2017 and were known . . . before discovery concluded in December 2018.” *Id.* at 7. Later,
11 after the case was reassigned to this judge, the court granted summary judgment for defendants on
12 all claims except for the race-discrimination claim. *Doutherd I* Order (Oct. 13, 2020), ECF
13 No. 160. The court then granted judgment on the pleadings on the race discrimination claim in
14 May 2021. *Doutherd I* Order (May 4, 2021), ECF No. 184.

15 Plaintiff filed this action in state court in February 2021. *See Tyrone Doutherd v. United*
16 *Parcel Service Freight*, No. 2021-0297 (Yolo Cty. filed Feb. 22, 2021). In it, plaintiff alleges
17 eight claims: (1) Wrongful/Constructive Termination, (2) Racial Discrimination by UPSF,
18 (3) Fraud by Employer UPSF (Concealment and Misrepresentation), (4) Employment
19 Discrimination by UPSF/Harassment and Retaliation, (5) Additional Specific Acts of
20 Employment Discrimination by UPSF/Harassment and Retaliation After Filing 2017 Complaint,
21 (6) Employment Discrimination, Lack of Accommodation by UPSF, (7) Medical Discrimination
22 and Retaliation Claims/Employer Negligence, and (8) Violations of State Statutes by UPSF and
23 UPS.

24 According to this complaint, plaintiff submitted a new complaint to the Department of
25 Fair Employment and Housing (DFEH) in March 2020, received a right to sue letter in October
26 2020, and is now suing under this DFEH letter for “serious intervening events and continuing acts
27 of retaliation” he says have persisted since April 2017. Compl. ¶ 19. Plaintiff alleges he suffered
28 a variety of harms following his constructive termination. He alleges that “despite his repeated

requests, plaintiff cannot access his 401(k) proceeds.” *Id.* ¶ 23.A. He was provided “sham job invites” and human resource representatives threatened him with “termination” if he did not accept one of the improper jobs offered him. *Id.* ¶ 23.B–C. However, plaintiff had “already been terminated.” *Id.* ¶ 23.C.

In support of these allegations, plaintiff also alleges “he had no work assignment, was paid no salary, received no benefits, and was not permitted to obtain a timely physical to allow him to renew his” driver’s license. *Id.* ¶ 26. He also received “no medical coverage since the summer of 2018” despite the fact his employer “pays for this coverage for full time employees.” *Id.* ¶ 23.D. He also alleges that UPSF interfered with his ability to receive unemployment benefits. *Id.* ¶¶ 26, 34, 54.

Defendants removed this action from state court in April 2021 alleging the court had federal question jurisdiction over claims based on the American with Disabilities Act (ADA), Employee Retirement Income Security Act (ERISA), and the Labor Management Relations Act (LMRA). Not. of Removal at 2–5. Plaintiff filed objections to removal in an improperly noticed document. Pl. Obj. As noted, the court construed the objections as a motion to remand, Min. Order (Oct. 8, 2021), and provided defendants an opportunity to respond, which defendants elected to do. Remand Opp’n, ECF No. 26.

As it must, the court first addresses whether it has jurisdiction to resolve any matter in this case.

II. LEGAL STANDARD - JURISDICTION

District courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A defendant may remove a matter to federal court if the district court would have original jurisdiction. *See* 28 U.S.C. § 1441(a); *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). “The removing defendant bears the burden of overcoming the ‘strong presumption against removal jurisdiction.’” *Hansen v. Grp. Health Coop.*, 902 F.3d 1051, 1057 (9th Cir. 2018) (citing *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010)). “The strong

////

1 presumption against removal jurisdiction” means that “the court resolves all ambiguity in favor of
2 remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009).

3 District courts assess removals based on federal question jurisdiction, as here, under the
4 well-pleaded complaint rule. *Id.* A well-pleaded complaint must present a federal question on
5 the face of the plaintiff’s complaint. *Caterpillar, Inc.*, 482 U.S. at 398–99. Generally, removal is
6 improper when it is grounded in a federal defense. *Id.* at 399. “Notwithstanding this rule, when a
7 federal statute wholly displaces state law and provides the exclusive cause of action for a
8 plaintiff’s requested relief, we must ‘recharacterize a state law complaint . . . as an action arising
9 under federal law.’” *Hawaii ex rel. Louie v. HSBC Bank Nevada, N.A.*, 761 F.3d 1027, 1034 (9th
10 Cir. 2014). Federal question jurisdiction thus exists when a federal law “completely preempts” a
11 state cause of action. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S.*
12 *California*, 463 U.S. 1, 24 (1983).

13 **III. ANALYSIS**

14 Defendants argue this court has jurisdiction over plaintiff’s complaint as it asserts claims
15 under the ADA and seeks damages for an alleged denial of medical and 401(k) benefits, claims
16 that are preempted under ERISA and section 301 of the LMRA. Opp’n at 1.

17 **A. ADA**

18 However construed, plaintiff’s complaint does not affirmatively allege a claim under the
19 ADA. Plaintiff references the ADA only once in his complaint. In the fourth claim, which he
20 titles “employment discrimination by UPS Freight harassment and retaliation,” plaintiff states he
21 was “retaliated against by his employer based on race, whistleblower activities, and making civil
22 rights claims.” Compl. ¶ 49. In support of this claim, he alleges he was “discriminated against
23 for reporting violations of the ADA.” *Id.* ¶ 51. This single reference is insufficient to confer
24 federal question jurisdiction on this court. Defendants argue the “variety of allegations relating to
25 disability discrimination and retaliation” imply that this claim is brought under the ADA.
26 Remand Opp’n at 3. However, there are state causes of action that prohibit discrimination and
27 retaliation on the basis of disability, and thus the mere reference to a federal statute in a claim
28 does not inevitably convert the pleading to a federal claim. *See Merrell Dow Pharms. Inc. v.*

1 *Thompson*, 478 U.S. 804, 808, 817 (1986). If plaintiff is attempting to plead a state law claim
 2 that incorporates the ADA as an element, this also does not confer federal jurisdiction.
 3 *Rutherford v. La Jolla Riviera Apartment House LLC*, No. 19-1349, 2019 WL 6125255, at *2–*4
 4 (S.D. Cal. Nov. 19, 2019) (collecting cases where district courts rejected subject matter
 5 jurisdiction based on California state Unruh Act claims which require a violation of the ADA).
 6 While plaintiff does not state that he is suing under the Unruh Act, he also does not state he is
 7 suing under the ADA. A federal question under the ADA is not presented clearly “on the face of
 8 the plaintiff’s complaint” and therefore the court may not read one into it. *See Caterpillar, Inc.*,
 9 482 U.S. at 398–99.

10 **B. ERISA**

11 Plaintiff also does not affirmatively allege an ERISA claim but does allege he was
 12 retaliated against by his employer by virtue of its withholding his 401(k) benefits and medical
 13 coverage. Under the first cause of action entitled “wrongful/constructive termination” plaintiff
 14 alleges defendants wrongfully withheld his 401(k) benefits. Compl. ¶ 26. In his fifth claim, titled
 15 “additional specific acts of employment discrimination by UPSF; harassment and retaliation after
 16 filing 2017 complaint,” he alleges UPSF is improperly “withholding release of any funds in his
 17 401(k) plan.” *Id.* ¶ 54.

18 Section 510 of ERISA makes it unlawful for “any person to discharge, fine, suspend,
 19 expel, discipline, or discriminate against a participant or beneficiary for exercising any right to
 20 which he is entitled under the provisions of an employee benefit plan . . . or for the purpose of
 21 interfering with the attainment of any right to which such participant may become entitled under
 22 the plan.” 29 U.S.C. § 1140. Section 514 of ERISA provides for preemption of state law claims
 23 that seek a remedy for violations of rights guaranteed by ERISA. *Id.* § 1144.

24 A state law claim may be subject to “complete preemption” or “conflict preemption”
 25 under ERISA. *Washington v. AT & T Corp.*, No. C 10-03751, 2011 WL 233004, at *3 (N.D. Cal.
 26 Jan. 24, 2011). Conflict preemption, relevant to this case, exists where a state-law cause of action
 27 “relate[s] to” an ERISA benefit plan. *Marin General Hosp. v. Modesto & Empire Traction Co.*,
 28 581 F.3d 941, 949 (9th Cir. 2009). The “relates to” inquiry turns on whether the state law claim

1 at issue has reference to an ERISA plan or if the claim has a connection with an ERISA plan.
2 *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1081 (9th Cir. 2009). Put another way, “[a] state law claim
3 relates to an ERISA plan if it has a connection with or a reference to it, such that the existence of
4 an ERISA plan is a critical factor in establishing liability under a state cause of action.” *Edwards*
5 *v. Lockheed Martin Corp.*, 617 F. App’x 648, 650 (9th Cir. 2015) (internal quotations omitted).
6 “A state claim references an ERISA plan if it acts immediately and exclusively upon ERISA
7 plans or the existence of ERISA plans is essential to the [claim’s] operation.” *Id.*

8 In determining whether ERISA preempts a state law cause of action, the Ninth Circuit
9 looks to “the employer’s alleged motivation in terminating the employee.” *Campbell v.*
10 *Aerospace Corp.*, 123 F.3d 1308, 1312 (9th Cir.1997). “[When] the loss of ERISA benefits [i]s a
11 result of rather than a motivation for a wrongful discharge, there [i]s no cause of action under
12 ERISA.” *Karambelas v. Hughes Aircraft Co.*, 992 F.2d 971, 974 (9th Cir. 1993). To be
13 preempted by ERISA, the employer must terminate an employee in order to “destroy[] the
14 employee’s benefits.” *See Campbell*, 123 F.3d at 1313.

15 Here, construing plaintiff’s claims liberally, plaintiff does not allege his employers
16 constructively terminated him in order to deny him his benefits. Instead, he alleges the
17 withholding of funds in his 401(k) plan evidences discrimination and retaliation or demonstrates
18 he was constructively terminated. Compl. ¶ 26 (UPS “has withheld all the features that are
19 required to be provided to terminated employees, such as . . . his 401(k) fund); *id.* ¶ 54 (“UPS
20 retaliated against plaintiff . . . by . . . withholding release of any funds in his 401(k) plan.”). In
21 particular, the complaint does not allege he was terminated by virtue of defendants’ desire to
22 avoid paying 401(k) benefits. *See Hoeft v. Time Warner Cable, Inc.*, No. 1800293, 2018 WL
23 2078814, at *7–8 (C.D. Cal. May 2, 2018) (no ERISA preemption when plaintiff cites to delay of
24 certain benefits as “one of several examples of [defendant’s] discriminatory” conduct).
25 Therefore, his first, third, and fifth claims that reference his 401(k) plan do not support federal
26 jurisdiction.

27 /////

1 **C. LMRA**

2 Finally, defendants contend this court can properly exercise jurisdiction because plaintiff's
 3 claims are preempted by the LMRA. Section 301 of the LMRA, similar to ERISA, is the source
 4 of another "extraordinary pre-emptive power" that "converts an ordinary state common law
 5 complaint into one stating a federal claim for purposes of the well-pleaded complaint rule."
 6 *Curtis v. Irwin Indus., Inc.*, 913 F.3d 1146, 1152 (9th Cir. 2019) (citing *Metro. Life Ins. v. Taylor*,
 7 481 U.S. 58, 65 (1987)). Section 301 provides that "[s]uits for violation of contracts between an
 8 employer and a labor organization . . . may be brought in any district court of the United
 9 States." 29 U.S.C. § 185(a). "Although § 301 contains no express language of preemption, the
 10 Supreme Court has long interpreted the LMRA as authorizing federal courts to create a uniform
 11 body of federal common law to adjudicate disputes that arise out of labor contracts." *Curtis*,
 12 913 F.3d at 1151. Thus, a civil complaint asserting claims preempted by section 301 of the
 13 LMRA "raises a federal question that can be removed to a federal court." *Id.* at 1152.

14 Section 301 may not be read so broadly, however, as to "pre-empt nonnegotiable rights
 15 conferred on individual employees as a matter of state law." *Id.* (quoting *Livadas v. Bradshaw*,
 16 512 U.S. 107, 123 (1994)). For courts assessing the bounds of Section 301 preemption, the Ninth
 17 Circuit prescribes a two-part test. *Id.* at 1152–53. First, courts ask whether a "right exists solely
 18 as a result of the CBA," or collective bargaining agreement. *Id.* at 1152 (quoting *Burnside v.*
 19 *Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007)). If yes, the claim is preempted.
 20 *Burnside*, 491 F.3d at 1059. If not, courts must ask "whether a plaintiff's state law right is
 21 substantially dependent on analysis of [the CBA],' which turns on whether the claim cannot be
 22 resolved by simply 'look[ing] to' versus 'interpreting' the CBA." *Curtis*, 913 F.3d at 1153
 23 (citations omitted). A court typically applies the *Burnside* preemption analysis to each discreet
 24 claim. *See Sykes v. F.D. Thomas, Inc.*, No. 20-03616, 2021 U.S. Dist. LEXIS 19763, at *3 (N.D.
 25 Cal. Feb. 2, 2021) ("each of the alleged Labor Code violations must be analyzed individually
 26 under the Ninth Circuit's two-step test for complete preemption as set out in *Burnside*").

27 Plaintiff references the CBA once in the fact section of his complaint. Compl. ¶ 23.C
 28 ("leaving plaintiff to the protection of a toothless and ineffective CBA . . ."). However,

1 defendants argue generally that plaintiff's state law claims of fraud and wrongful/constructive
2 termination -- the first and third claims --, as well as his claims related to deprivation of medical
3 benefits -- woven throughout numerous claims --, are preempted by the LMRA. Remand Opp'n
4 at 10. Defendants do not go through the *Burnside* preemption analysis with respect to each claim.
5 Defendants instead argue that whether plaintiff's medical insurance benefits were improperly
6 cancelled, and whether he was improperly found to be medically unqualified to drive, and under
7 what conditions plaintiff could return to work, all are dependent on the CBA. Remand Opp'n 12–
8 13. According to defendants, article 25 of plaintiff's CBA sets out the benefit plans for which
9 union employees are eligible and dictates “how long the employer must continue employer
10 contributions if an employee is injured.” Not. of Removal ¶ 26; CBA Excerpts, Remand Opp'n
11 Ex. 1, ECF No. 26-2. Therefore, defendants conclude, plaintiff's claims are preempted by § 301
12 of the LMRA.

13 However, “[c]auses of action that only tangentially involv[e] a provision of a collective-
14 bargaining agreement are not preempted by section 301.” *Detabali v. St. Luke's Hosp.*, 482 F.3d
15 1199, 1203 (9th Cir. 2007). Here, plaintiff is arguing the denial of medical benefits is an aspect
16 of the discrimination and retaliation he faced at the hands of the employer. While the court “will
17 have to refer to the [benefits] provision of the collective bargaining agreement,” whether plaintiff
18 was discriminated against does “not depend on interpretation of the collective bargaining
19 agreement.” *Id.* As plaintiff's rights are not dependent on the CBA and the state law claims do
20 not require substantive interpretation of the CBA, defendants do not carry their burden in
21 “overcoming the ‘strong presumption against removal jurisdiction.’” *Hansen v. Grp. Health*
22 *Coop.*, 902 F.3d 1051, 1057 (9th Cir. 2018).

23 As this court does not have subject matter jurisdiction over this action, the court will
24 remand the case to Yolo County Superior Court. That court is the one to consider whether some
25 or all of plaintiff's claims are barred by the doctrine of *res judicata*.

26 /////

27 /////

1 **IV. CONCLUSION**

2 The court **remands** the action to Yolo County Superior Court. This order resolves
3 ECF No. 11. The motions to dismiss at ECF No. 6 and ECF No. 9 are **moot**.

4 IT IS SO ORDERED.

5 DATED: November 1, 2021.



CHIEF UNITED STATES DISTRICT JUDGE